

Appl. No. : 10/067,569
Filed : February 5, 2002

REMARKS

Introduction

Applicants have received the Office Action of March 9, 2004 ("Office Action"). This Amendment is accompanied by a Petition for an Extension of Time for a Period of One Month to extend the period for filing a timely response to July 9, 2004. After entry of the Amendment to the Claims set forth above, Claims 1-11, 17-29, and 48-52 will be pending in this application.

Amendments to the Claims

Applicants respectfully request entry of the Amendments to the Claims set forth above. Claims 12-16, 30-47, and 53-64, have been canceled without prejudice. Independent Claims 1 and 48 have been amended to recite a detoxified extract as described in the specification at, e.g., paragraphs 0037 to 0040. Dependent Claim 49 has been amended to render it consistent with the changes to independent Claim 48. Independent Claim 17 has been amended to recite detoxifying the liquid extract, the dry extract, or both, as described in the specification at, e.g., paragraphs 0037 to 0040. Dependent Claim 18 has been amended to render it consistent with the changes to Claim 17. Since all of the changes to the claims are supported in the specification, Applicants respectfully submit that there is no issue of new matter, and respectfully request entry of the Amendments to the Claims set forth above.

Applicants reserve the right to file divisional and/or continuation applications containing claims directed to all or part of the subject matter of any claims amended, withdrawn, or canceled at any time during the prosecution of this application, and thus unclaimed subject matter is not dedicated to the public.

Information Disclosure Statements (IDS's)

The Office indicates that the third sheet of the IDS filed on November 4, 2002 was not received by the examiner, and requests submission of that third sheet for consideration by the Office. According to Applicant's records, all three sheets of the IDS were submitted to the Office on November 1, 2002. However, for the convenience of the Office, Applicants provide herewith a courtesy copy of the third sheet, and respectfully request consideration thereof.

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Claim Rejections - 35 U.S.C. § 102

Claims 1-3, 7-9 and 48 have been rejected under 35 U.S.C. § 102(b) as being anticipated by the disclosure of U.S. Patent No. 5,612,039 ("Policappelli"). Applicants respectfully traverse this rejection.

Applicants respectfully submit that Policappelli fails to teach every limitation of Claims 1-3, 7-9 and 48. See M.P.E.P. § 2131 ("To anticipate a claim, the reference must teach every element of the claim"). Claims 1 and 48 recite, *inter alia*, a detoxified extract from an agricultural by-product obtained as a result of processing a tropical crop. As explained in the specification at paragraph 0025, the terms "agricultural by-product" and "by-product" refer to plant products that are left over after separation of the main value product. For example, such by-products generally include the skin, mucilage, rind, shell and/or husk of the tropical crops.

The Office points to the disclosure by Policappelli of various ingredients such as grapefruit pectin and pineapple dry extract, but fails to point out where Policappelli teaches or suggests a detoxified extract from an agricultural by-product obtained as a result of processing a tropical crop. Applicants respectfully submit that grapefruit pectin and pineapple dry extract are obtained from grapefruit and pineapple, respectively, not from by-products obtained as a result of processing those fruits. In addition, Applicants respectfully submit that Policappelli fails to disclose a detoxified extract as recited in amended Claims 1 and 48. Applicants note that the Office states: "The prior art does not teach processing the tropical fruit by employing a detoxification method." Office Action at 5.

Therefore, Applicants respectfully request reconsideration and withdrawal of the rejection of Claims 1-3, 7-9 and 48 under 35 U.S.C. § 102(b) as being anticipated by Policappelli.

Claims 1-9, 11, 17-29, 48-52, 58 and 59 have been rejected under 35 U.S.C. § 102(e) as being anticipated by the disclosure of U.S. Patent No. 6,572,915 ("Drunen"). Applicants respectfully traverse this rejection. Applicants respectfully submit that amended Claims 1-11, 17-29, and 48-52 are neither anticipated nor obvious because Drunen fails to teach or suggest the claimed combination of limitations. Applicants respectfully point out that independent Claims 1 and 48 have been amended to recite a detoxified extract, and that independent Claim 17 has been amended to recite detoxifying the liquid extract, the dry extract, or both. Applicants note that the Office states: "The prior art does not teach processing the tropical fruit by employing a

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detoxification method.” Office Action at 5. Therefore, Applicants respectfully request reconsideration and withdrawal of this rejection.

Claim Rejections - 35 U.S.C. § 103

Claims 10 and 49-52 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Policappelli. Applicants respectfully traverse this rejection.

Applicants respectfully submit that the Office has failed to establish a *prima facie* case of obviousness because the three required criteria have not been met:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

M.P.E.P. § 2143. Applicants respectfully submit that the Office has failed to indicate how Policappelli discloses or suggests all of the claim limitations. As discussed above, Applicants respectfully submit that Policappelli fails to teach or suggest a detoxified extract from an agricultural by-product obtained as a result of processing a tropical crop as recited in Claims 1 and 48. Likewise, Applicants respectfully submit that Policappelli fails to disclose a process that involves obtaining a by-product from a tropical crop as recited in Claim 17. In addition, Policappelli fails to teach or suggest a detoxified extract as recited in Claim 1 and 48, and fails to teach or suggest detoxifying the liquid extract, dry extract, or both as recited in Claim 17.

The Office notes that “[t]he prior art does not teach processing the tropical fruit by employing a detoxification method,” but has taken the position that “[i]t would have been obvious to one [of] ordinary skill in the art to use an extract of a tropical fruit that was processed by a method to remove any impurities and toxins.” Office Action at 5. Applicants disagree because Policappelli indicates that such extracts are suitable for human consumption without such additional processing, thus implying that no toxins are present or that any such toxins are present at a safe level. Since Policappelli does not teach or suggest unsafe levels of toxins, Applicants respectfully submit that there is no teaching or suggestion to employ detoxification.

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In addition, there is no reasonable expectation of success because Policappelli does not even hint as to how detoxification should be carried out.

Applicants respectfully submit that the Office has failed to establish a *prima facie* case of obviousness, and therefore respectfully request reconsideration and withdrawal of the rejection of Claims 10 and 49-52 under 35 U.S.C. § 103(a) as being unpatentable over Policappelli.

Conclusion

In view of the Remarks set forth above, Applicants respectfully submit that Claims 1-11, 17-29, and 48-52 are in condition for allowance, early notification of which would be appreciated. The Office is respectfully invited to contact the undersigned at the telephone number provided below with any questions regarding this application.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: July 9, 2004

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